



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 3, 2021

Ms. Meagan Scott  
Assistant District Attorney  
Harris County District Attorney's Office  
500 Jefferson Street, Suite 600  
Houston, Texas 77002

OR2021-30680

Dear Ms. Scott:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 913378 (HCDA Tracking #s 2021.08-0043 and 2021.08-0055).

The Harris County District Attorney's office (the "district attorney's office") received two requests from different requestors for e-mails during a specified time period involving two named individuals. You claim a portion of the submitted information is not subject to the Act pursuant to section 552.002 of the Government Code. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code and privileged under Texas Rule of Civil Procedure 192.5. We have considered your arguments and reviewed the submitted information.

Initially, as you note, some of the submitted information is not subject to the Act. The Act applies to "public information," which is defined in section 552.002 of the Government Code as:

Information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act can also encompass information that a governmental body does not physically possess. Information that is written, produced, collected, assembled, or maintained by a third party, including an individual officer or employee of a governmental body in his or her official capacity, may be subject to disclosure under the Act if a governmental body owns, has a right of access, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov't Code § 552.002(a); *see* Open Records Decision No. 462 at 4 (1987); *cf.* Open Records Decision No. 499 (1988). Information is "in connection with the transaction of official business" if it is "created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a government function on behalf of a governmental body, and pertains to official business of the governmental body." Gov't Code § 552.002(a-1).

The information in Appendix C-2 consists of personal communications between the named individuals. After reviewing the information at issue, we find it is purely personal and does not constitute information "created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity[.]" *See* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Thus, the information in Appendix C-2 is not subject to the Act and need not be released in response to these requests.<sup>1</sup>

Section 552.103 of the Government Code provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or

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<sup>1</sup> As we are able to make this determination, we need not consider the arguments against disclosure of this information.

employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The district attorney's office states, and provides documentation showing, criminal cases styled *State v. Lewis*, Cause No. 1555746; *State v. Gallegos*, Cause No. 1728441; and *State v. Catham*, Cause No. 1647725, were pending in the 339th, 228th, and 339th District Courts of Harris County, Texas, respectively, when the district attorney's office received the instant requests. The district attorney's office states the remaining information is related to the pending litigation. Based on the representations of the district attorney's office, the submitted documentation, and our review of the remaining information, we find litigation was pending when the district attorney's office received these requests for information, and the remaining information is related to the pending litigation for the purposes of section 552.103. Therefore, the district attorney's office may withhold the information in Appendix C-1 under section 552.103(a) of the Government Code.<sup>2</sup>

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the information in Appendix C-2 is not subject to the Act and need not be released in response to these requests. The district attorney's office may withhold the information in Appendix C-1 under section 552.103(a) of the Government Code.

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<sup>2</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of the information at issue.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Chase D. Young  
Attorney  
Open Records Division

CDY/jm

Ref: ID# 913378

c: 2 Requestors